



Reprinted
February 24, 2007

HOUSE BILL No. 1386

DIGEST OF HB 1386 (Updated February 23, 2007 2:41 pm - DI 106)

Citations Affected: IC 11-8; IC 35-42; noncode.

Synopsis: Federal sex offender bill. Adds: (1) promoting prostitution as a Class B felony; (2) promotion of human trafficking if the victim is less than 18 years of age; (3) sexual trafficking of a minor; (4) human trafficking if the victim is less than 18 years of age; and (5) possession of child pornography as a first offense; to the list of offenses requiring a person to register as a sex offender. Specifies that registration as a sex offender is not required for: (1) a parent or guardian who is convicted of kidnapping or confining a child of the parent or a child over whom the guardian has guardianship; or (2) a person convicted of sexual misconduct with a minor as a Class C felony if the person is not more than four years older than the victim and the court finds that the person should not be required to register. Specifies that, for purposes of the child pornography statute, a person may not possess certain material depicting or describing sexual conduct by a child: (1) the person knows is less than 16 years of age; or (2) who appears to be less than 16 years of age. Provides that it is a Class B felony if a person commits child seduction by using a computer network and has a previous unrelated conviction for committing the offense by using a computer network. Removes the lifetime registration requirement for sexual battery as a Class D felony, and imposes the standard ten year registration requirement. Specifies that a person is an offender against children if the person engages in a conspiracy to commit or attempts to commit an offense that would make the person an offender against children. (The introduced version of this bill was prepared by the sentencing policy study committee.)

Effective: July 1, 2007.

Lawson L, Welch, Ulmer, Foley

January 16, 2007, read first time and referred to Committee on Judiciary.
February 19, 2007, amended, reported — Do Pass.
February 23, 2007, read second time, amended, ordered engrossed.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1386

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 11-8-8-5, AS ADDED BY P.L.173-2006,
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 5. (a) As used in this chapter, "sex offender"
4 means a person convicted of any of the following offenses:
5 (1) Rape (IC 35-42-4-1).
6 (2) Criminal deviate conduct (IC 35-42-4-2).
7 (3) Child molesting (IC 35-42-4-3).
8 (4) Child exploitation (IC 35-42-4-4(b)).
9 (5) Vicarious sexual gratification (IC 35-42-4-5).
10 (6) Child solicitation (IC 35-42-4-6).
11 (7) Child seduction (IC 35-42-4-7).
12 (8) Sexual misconduct with a minor as a Class A, Class B, or
13 Class C felony (IC 35-42-4-9), **unless:**
14 (A) **the person is convicted of sexual misconduct with a**
15 **minor as a Class C felony;**
16 (B) **the person is not more than four (4) years older than**
17 **the victim; and**



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(C) the sentencing court finds that the person should not be required to register as a sex offender.

(9) Incest (IC 35-46-1-3).

(10) Sexual battery (IC 35-42-4-8).

(11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, **and the person who kidnapped the victim is not the victim's parent or guardian.**

(12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age, **and the person who confined or removed the victim is not the victim's parent or guardian.**

(13) Possession of child pornography (IC 35-42-4-4(c)). ~~if the person has a prior unrelated conviction for possession of child pornography (IC 35-42-4-4(c)).~~

(14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.

(15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than eighteen (18) years of age.

(16) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).

(17) Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less than eighteen (18) years of age.

~~(14)~~ **(18)** An attempt or conspiracy to commit a crime listed in subdivisions (1) through ~~(13)~~: **(17)**.

~~(15)~~ **(19)** A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through ~~(14)~~: **(18)**.

(b) The term includes:

(1) a person who is required to register as a sex offender in any jurisdiction; and

(2) a child who has committed a delinquent act and who:

(A) is at least fourteen (14) years of age;

(B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and

(C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

SECTION 2. IC 11-8-8-19, AS ADDED BY P.L.173-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. (a) Except as provided in subsections (b) through (e), a sex offender is required to register under this chapter

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until the expiration of ten (10) years after the date the sex offender:

- (1) is released from a penal facility (as defined in IC 35-41-1-21) or a secure juvenile detention facility of a state or another jurisdiction;
- (2) is placed in a community transition program;
- (3) is placed in a community corrections program;
- (4) is placed on parole; or
- (5) is placed on probation;

whichever occurs last. The department shall ensure that an offender who is no longer required to register as a sex offender is notified that the obligation to register has expired.

(b) A sex offender who is a sexually violent predator is required to register for life.

(c) A sex offender who is convicted of at least one (1) sex offense that the sex offender committed:

- (1) when the person was at least eighteen (18) years of age; and
- (2) against a victim who was less than twelve (12) years of age at the time of the crime;

is required to register for life.

(d) A sex offender who is convicted of at least one (1) sex offense in which the sex offender:

- (1) proximately caused serious bodily injury or death to the victim;
- (2) used force or the threat of force against the victim or a member of the victim's family, **unless the offense is sexual battery as a Class D felony**; or
- (3) rendered the victim unconscious or otherwise incapable of giving voluntary consent;

is required to register for life.

(e) A sex offender who is convicted of at least two (2) unrelated sex offenses is required to register for life.

SECTION 3. IC 35-42-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) As used in this section:

"Disseminate" means to transfer possession for free or for a consideration.

"Matter" has the same meaning as in IC 35-49-1-3.

"Performance" has the same meaning as in IC 35-49-1-7.

"Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching

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of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

(1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

(1) a picture;

(2) a drawing;

(3) a photograph;

(4) a negative image;

(5) undeveloped film;

(6) a motion picture;

(7) a videotape;

(8) a digitized image; or

(9) any pictorial representation;

that depicts or describes sexual conduct by a child who **the person knows** is less than sixteen (16) years of age or **who** appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials ~~are~~ **is** for legitimate scientific or educational purposes.

SECTION 4. IC 35-42-4-6, AS AMENDED BY P.L.124-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

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- (1) in person;
- (2) by telephone;
- (3) in writing;
- (4) by using a computer network (as defined in IC 35-43-2-3(a));
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)) **and the offense is a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).**

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)) **and the offense is a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).**

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

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SECTION 5. IC 35-42-4-11, AS AMENDED BY P.L.173-2006,
SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2007]: Sec. 11. (a) As used in this section, "offender against
children" means a person required to register as a sex offender under
IC 11-8-8 who has been:

(1) found to be a sexually violent predator under IC 35-38-1-7.5;
or

(2) convicted of one (1) or more of the following offenses:

(A) Child molesting (IC 35-42-4-3).

(B) Child exploitation (IC 35-42-4-4(b)).

(C) Child solicitation (IC 35-42-4-6).

(D) Child seduction (IC 35-42-4-7).

(E) Kidnapping (IC 35-42-3-2), if the victim is less than
eighteen (18) years of age.

**(F) Attempt to commit or conspiracy to commit an offense
listed in clauses (A) through (E).**

**(G) An offense in another jurisdiction that is substantially
similar to an offense described in clauses (A) through ~~(E)~~ (F).**

(b) As used in this section, "reside" means to spend more than two
(2) nights in a residence in any thirty (30) day period.

(c) An offender against children who knowingly or intentionally:

(1) resides within one thousand (1,000) feet of:

(A) school property;

(B) a youth program center; or

(C) a public park; or

(2) establishes a residence within one (1) mile of the residence of
the victim of the offender's sex offense;
commits a sex offender residency offense, a Class D felony.

SECTION 6. [EFFECTIVE JULY 1, 2007] **IC 35-42-4-6 and
IC 35-42-4-11, both as amended by this act, apply only to offenses
committed after June 30, 2007.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1386, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 28, after "who" insert "**the person knows**".

Page 4, after line 38, begin a new paragraph and insert:

"SECTION 4. IC 35-42-4-6, AS AMENDED BY P.L.124-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone;
- (3) in writing;
- (4) by using a computer network (as defined in IC 35-43-2-3(a));
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)) **and the offense is a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).**

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

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commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)) **and the offense is a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).**

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

SECTION 5. [EFFECTIVE JULY 1, 2007] IC 35-42-4-6, as amended by this act, applies only to offenses committed after June 30, 2007."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1386 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 8, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1386 be amended to read as follows:

Page 5, after line 42, begin a new paragraph and insert:

"SECTION 5. IC 35-42-4-11, AS AMENDED BY P.L.173-2006, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) As used in this section, "offender against children" means a person required to register as a sex offender under IC 11-8-8 who has been:

- (1) found to be a sexually violent predator under IC 35-38-1-7.5;
- or
- (2) convicted of one (1) or more of the following offenses:
 - (A) Child molesting (IC 35-42-4-3).
 - (B) Child exploitation (IC 35-42-4-4(b)).
 - (C) Child solicitation (IC 35-42-4-6).
 - (D) Child seduction (IC 35-42-4-7).
 - (E) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.

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(F) **Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (E).**

(G) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through ~~(E)~~ (F).

(b) As used in this section, "reside" means to spend more than two (2) nights in a residence in any thirty (30) day period.

(c) An offender against children who knowingly or intentionally:

(1) resides within one thousand (1,000) feet of:

(A) school property;

(B) a youth program center; or

(C) a public park; or

(2) establishes a residence within one (1) mile of the residence of the victim of the offender's sex offense; commits a sex offender residency offense, a Class D felony."

Page 6, line 1, delete "IC 35-42-4-6," and insert "**IC 35-42-4-6 and IC 35-42-4-11, both**".

Page 6, line 2, delete "applies" and insert "**apply**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1386 as printed February 20, 2007.)

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